

Appeal from a decision of the Colorado State Office, Bureau of Land Management, declaring lode mining claims CMC-94808 and CMC-94809 abandoned and void for failure to file timely affidavits of assessment work.

Reversed and remanded.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1982), requires the owner of an unpatented mining claim located prior to Oct. 21, 1976, to file evidence of annual assessment work or notice of intention to hold with the Bureau of Land Management on or before Oct. 22, 1979, and on or before Dec. 30 of each year thereafter. This requirement is mandatory and the failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and render the claim void.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim

Although 43 U.S.C. § 1744(a) does not prescribe the form a notice of intention to hold a mining claim must take, not every document sent to BLM from which intent might be inferred is sufficient. Whatever the form of the instrument, it must be filed with BLM as a notice of intent to hold, indicating that the claim owner continues to have an interest in the claim. The instrument must also include a description of the location of the mining claim sufficient to locate the claimed lands on the ground, the BLM assigned claim number, or the name of the claim. It must also be evident that a copy of the document was or will be recorded with the county or local recorder's office.

APPEARANCES: R. H. Gunn, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

R. H. Gunn has appealed from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated June 17, 1986, declaring the T.V. No. 4 and T.V. No. 6 mining claims (CMC-94808 and CMC-94809) abandoned and void. As a basis for its decision BLM found that appellant had failed to timely file evidence of annual labor or a notice of intention to hold the claims on or before October 22, 1979, as required by section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1982).

The record discloses that T.V. No. 4 was originally located on May 14, 1957, and the location notice was subsequently recorded with the Park County Recorder, Park County, Colorado, on June 4, 1957. This claim was amended on September 3, 1968, and notice of amended location was filed with the County on September 5, 1968. A copy of the amended notice of the location was filed with BLM on July 25, 1979.

Appellant originally located the T.V. No. 6 on May 14, 1957, and recorded the notice of location with the Park County Recorder on June 4, 1957. The claim was amended on April 28, 1958, and the notice of amended location was filed with the County on April 29, 1958. Copies of both the original notice of location and the amended notice of location were filed with BLM.

On July 25, 1979, BLM received a letter from appellant, dated July 23, 1979, which reads in part:

As owner of two unpatented Mining Lode Claims located in the Mount Dale Mining District in Park County, Colorado, I am submitting copies of the amended location certificate, Quit Claim Deed and a location map together with additional information that I understand is required to be filed in your office prior to October 22, 1979. Please notify me if additional submissions and/or information is required to insure the validity of my claims. [Emphasis added.]

This letter also contained the following information: the name of the claims, dates of location, county recordation information, type of claim, the name and address of owner, and the location of claims. At the close of the letter, appellant stated that a copy of the letter and attachments, including a map, were being sent to the Clerk and Recorder of Park County at Fairplay, Colorado.

On appeal appellant submits copies of his correspondence with BLM, including his letter of July 23, 1979, and copies of documents required by 43 CFR 3833.1-2 (1978). Appellant contends that these documents show that he has met the FLPMA mining claim recordation requirements.

[1] Section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1982), requires the owner of an unpatented mining claim located prior to October 21, 1976, to file evidence of annual assessment work or notice of intention to hold with BLM on or before October 22, 1979, and on or before December 30 of each year

thereafter. This requirement is mandatory and the failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and render the claim void. See, e.g., Ralph C. Memmott, 88 IBLA 363 (1985); Glenn Kroshus, 87 IBLA 213 (1985).

[2] In Add-Ventures, Ltd., 95 IBLA 44 (1986), the Board discussed the form of a notice of intent under FLPMA, 43 U.S.C. § 1744(a)(2) (1982) and the regulations, 43 CFR Subpart 3833:

As an alternative to filing an affidavit of assessment work, subsection 1744(a) permits a locator to file a notice of intent. Appellant correctly states the statute does not prescribe the form a notice must take, but this does not mean that any document sent to BLM from which intent might be inferred is sufficient. See Paul S. Coupey, 35 IBLA 112, 115 (1978). Rather, 43 U.S.C. § 1744(a)(2) (1982); 43 CFR 3833.2-3(a). It must indicate that the claim owner continues to have an interest in the claim. 43 CFR 3833.0-5(1). It must also be a copy of the document which was or will be recorded in the local office where the claim's location notice has been recorded. 43 U.S.C. § 1744(a)(1); 43 CFR 3833.2-3; Ronald Willden, 60 IBLA 173 (1981); Ted Dilday, 56 IBLA 337, 88 I.D. 682 (1981). The instrument must also include "a description of the location of the mining claim sufficient to locate the claimed lands on the ground," 43 U.S.C. § 1744(a)(2) (1982), the BLM assigned claim number, 43 CFR 3833.2-3(b)(1)(i), or the name of the claim, Arley Taylor, 90 IBLA 313, 314 (1986); Philip Brandl, 54 IBLA 343, 344 (1981). [Emphasis added.]

Id. at 49.

As stated in the Board's holding in Add-Ventures, Ltd., supra, the mining claimant need not state in a document that it is a notice of intention to hold, but must only intend for it to be a notice of intent to hold. Appellant's letter of July 23, 1979, satisfies the requirements for a notice of intent under FLPMA and the regulations. See Add-Ventures, Ltd., supra. It meets all the requirements for notice and indicates on its face that it was being submitted to the County recorder's office. It is clear it was filed with BLM as a notice of intent to hold, even though those words do not appear in the letter. 1/

---

1/ In Red Top Mercury Mines, Inc., 96 IBLA 391 (1987), the Board found that a letter filed by the appellant did not constitute a notice of intent to hold certain claims. The Board admitted that the letter and certain other documents evidenced a "continual interest" in the claims; however, the Board found that the letter was not filed as a notice of intent and did not satisfy the requirements governing the contents of a notice of intent. Id. at 395.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and remanded to BLM for action consistent with this opinion.

R. W. Mullen  
Administrative Judge

We concur:

Franklin D. Arness  
Administrative Judge

Bruce R. Harris  
Administrative Judge.

